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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/764,726

01/26/2004

J. David Blaha

702.118

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37902 7590 11/14/2007
WRIGHT MEDICAL TECHNOLOGY, INC.
5677 AIRLINE ROAD
ARLINGTON, TN 38002-9501 .

EXAMINER

HOFFMAN, MARY C

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

11/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/764,726	Applicant(s) BLAHA ET AL.	
	Examiner Mary Hoffman	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-27 is/are pending in the application.
- 4a) Of the above claim(s) 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10 and 13-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

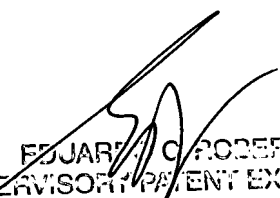
In view of the appeal brief filed on 08/13/2007, PROSECUTION IS HEREBY REOPENED. Rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:


EDWARD C. ROBERT
SUPERVISORY PATENT EXAMINER

Allowable Subject Matter

The indicated allowability of claims 21-23 is withdrawn in view of the new rejection that follows.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 13, 15 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Neal et al. (U.S. Patent No. 5,766,261).

Neal et al. disclose a compacting broach for forming a cavity in the intramedullary canal of a bone to receive a prosthetic component, comprising an elongate body having a central longitudinal axis, a rearward end, a forward end, and a plurality of cutting teeth (ref. #48) on a surface of the elongated body and being matched to corresponding corners of the prosthetic component; and a distal tip at the forward end of the elongate body, the distal tip (ref. #50,52) comprising a plurality of fins extending radially to the central longitudinal axis and extending longitudinally, distally from the forward end of the body to converge at an apex aligned with the central longitudinal axis, the fins being disposed inwardly of the cutting teeth. The distal tip comprises four fins at 90 degree spaced locations about the central longitudinal axis.

The fins (see ref. #50,52) are planar, and the distal tip has a bullet-shape in longitudinal profile. The fins are fixedly attached to the elongate body (via connection ref. #44,56).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 6-10, 14, 16-23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neal et al. (U.S. Patent No. 5,766,261) in view of Deyerle (U.S. Patent No. 4,671,275).

Neal et al. disclose the claimed invention except for 1.) four corner edges extending longitudinally along the body to the forward end, cutting teeth along the corner edges extending without interruption along each the corner edge from a proximal end to adjacent the rearward end, and side walls connecting the cutting teeth of adjacent corner edges, the side walls extending inwardly from the cutting teeth in a direction of the central longitudinal axis, each of the side walls comprising first and second side wall segments extending angularly inwardly, the corner edges being matched to corresponding corners of the prosthetic component, and the side walls having a concave configuration, and 2.) the distal tip comprising three fins.

1.) Deyerle discloses four corner edges extending longitudinally along the body to the forward end, cutting teeth along the corner edges extending without interruption

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along each the corner edge from a proximal end to adjacent the rearward end, and side walls connecting the cutting teeth of adjacent corner edges, the side walls extending inwardly from the cutting teeth in a direction of the central longitudinal axis, each of the side walls comprising first and second side wall segments extending angularly inwardly, the corner edges being matched to corresponding corners of the prosthetic component, and the side walls having a concave configuration in order to provide an improved femoral rasp that prepares the bone canal for a rectangular prosthesis.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the rasp of Neal et al. with four corner edges extending longitudinally along the body to the forward end, cutting teeth along the corner edges extending without interruption along each the corner edge from a proximal end to adjacent the rearward end, and side walls connecting the cutting teeth of adjacent corner edges, the side walls extending inwardly from the cutting teeth in a direction of the central longitudinal axis, each of the side walls comprising first and second side wall segments extending angularly inwardly, the corner edges being matched to corresponding corners of the prosthetic component, and the side walls having a concave configuration in view of Deyerle in order to provide an improved femoral rasp that prepares the bone canal for a rectangular prosthesis.

2.) Regarding claims 8 and 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the distal tip comprising three fins (rather than four fins as disclosed by Neal et al.), since it has been

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held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Applicant is reminded that the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH



EDWARD M. ROBERT
SUPERVISORY PATENT EXAMINER